

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Case No. 18-50378 (WJF)

ERP Iron Ore, LLC

Chapter 11

Debtor.

**NOTICE OF HEARING AND MOTION OF UMB BANK, N.A.
AS INDENTURE TRUSTEE: (I) FOR EMERGENCY RELIEF; AND
(II) FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY**

TO: The entities specified in Local Rule 9013-3:

1. UMB Bank, N.A., as successor indenture trustee (“UMB”) and as creditor and party in interest, through its undersigned attorneys, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on the motion at 2:00 p.m. on Thursday, August 4, 2022, before the Honorable William J. Fisher, Courtroom 2B, 316 North Robert Street, St. Paul, MN 55101.

3. **The hearing will be held telephonically. Please use the following dial in instructions. Dial 1-888-684-8852 When prompted, enter ACCESS CODE: 5988550 When prompted, enter SECURITY CODE: 0428. If you have any problems connecting to the conference bridge, please contact chambers immediately at 651-848-1060.**

4. Because UMB is seeking expedited relief, any response to the Motion must be filed and delivered not later than the time before the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

5. The court has jurisdiction over the motion under 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rule of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Local Rule 1070-1. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

6. The motion is filed under 11 U.S.C. § 362, and Bankruptcy Rule 9014 and Local Rules 9013-1 through 9019-1.

7. On May 25, 2018, Glacier Park Iron Ore Properties LLC, Chester Company Ltd., HT Surface and Mineral LLC and Allete d/b/a Minnesota Power filed an involuntary petition against ERP Iron Ore, Inc. (the “**Debtor**”) under chapter 7 of the Bankruptcy Code. On July 17, 2018, the Debtor converted the case to a case under chapter 11 of the Bankruptcy Code. On December 1, 2018, the case was converted to a case under chapter 7 of the Bankruptcy Code and on December 3, 2018, Nauni Manty was appointed the chapter 7 trustee (the “**Trustee**”).

INTRODUCTION AND BACKGROUND

8. UMB is the successor indenture trustee under the Floating Rate Senior Secured Amortizing PIK Toggle Notes Indenture dated as of January 11, 2017 (the “**Indenture**”). The original indebtedness for the secured notes issued under the Indenture was in excess of \$25 million. As the date of this Motion, the remaining indebtedness due from the Debtors to the Noteholders is in excess of \$12.7 million.

9. By this Motion, UMB seeks an order from this court granting it expedited relief from the automatic stay to permit UMB to commence foreclosure and receivership proceedings with respect to certain real property owned by the Debtor and located at 64 E 100 N, Reynolds, IN 47980 commonly known as the pellet plant (the “**Reynolds PP Land**”). UMB, as assignee of the original indenture trustee under the Indenture, Wilmington Savings Fund Society FSB, holds a senior lien on the Reynolds PP Land on account of its Mortgage, Security Agreement,

Assignment of Leases and Rents, Financing Statement and Fixture Filing dated December 26, 2017 and recorded with the White County Recorder on December 29, 2017 as Instrument No. 171207834 (the “**Mortgage**”).

10. As a result of UMB’s Mortgage and other significant encumbrances on the Reynolds PP Land, the Trustee previously abandoned the estate’s interest in the Reynolds PP Land by filing a Limited Notice of Abandonment on January 24, 2019, as Docket No. 388.

11. UMB seeks an order granting it expedited relief from the stay because it must act quickly to secure and protect the value of the Reynolds PP Land along with the structures and other personal property located thereon that were acquired by Altos Hornos de Mexico S.A.B. de C.V. (“**AHMSA**”) in a bankruptcy sale approved by this Court. Following the hearing on AHMSA’s recently filed motion on July 7, 2022, this Court is aware of the ongoing disputes between AHMSA and Pocahontas Natural Resources, LLC (“**PNR**”) who purportedly acquired an interest in the land from the Debtor subject to UMB’s Mortgage.

12. In PNR’s letters to AHMSA, copies of which were filed with AHMSA’s recent motion dated June 13, 2022, filed as Docket No. 702, PNR claimed that “by operation of the bankruptcy” PNR “now owns” the Reynolds PP Land. The earliest of these letters from PNR to AHMSA was December, 2020. However, the Trustee’s 2019 abandonment of the Reynolds PP Land resulted in the land being abandoned to the Debtor, not PNR. In addition, an Owner’s and Encumbrances Report obtained from Chicago Title Company dated February 18, 2022, indicates that the Debtor, ERP Iron Ore LLC, holds title to the Reynolds PP Land based on the last deed of record.

13. Although the Trustee abandoned the estate’s interest in the Reynolds PP Land, the automatic stay remains in place while the Debtor’s bankruptcy case is still pending. UMB thus

seeks expedited relief from the automatic stay to permit it to commence proceedings for the appointment of a receiver to preserve and protect the Reynolds PP Land and to foreclose out the Debtor's or PNR's interests in the Reynolds PP Land.

RELIEF REQUESTED IN MOTION

14. For the reasons set forth above and in its accompanying memorandum of law, UMB seeks expedited relief from the automatic stay to exercise its rights under the Mortgage to commence foreclosure and receivership proceedings with respect to the Reynolds PP Land.

15. UMB reserves the right to call Gordon Gendler, Senior Vice President for UMB as a witness. Mr. Gendler's address is UMB Bank, N.A., 120 South Sixth Street, Suite 1400. Minneapolis, MN 55402.

WHEREFORE, UMB respectfully requests and prays that the Court:

1. Grant the request for expedited relief;
2. Enter an order granting UMB relief from the automatic stay.
3. Grant any such other relief as the Court deems just and proper.

Dated: July 29, 2022

Respectfully Submitted,
COZEN O' CONNOR

/s/ Joel D. Nessel

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Case No. 18-50378 (WJF)

ERP Iron Ore, LLC

Chapter 11

Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF UMB BANK, N.A., AS
INDENTURE TRUSTEE: (I) FOR EMERGENCY RELIEF;
AND (II) FOR AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY**

This memorandum of law is submitted in support of the Motion of UMB Bank, N.A., as successor indenture trustee (“**UMB**”) for Expedited Relief and for Relief From the Automatic Stay (the “**Motion**”).

FACTS

The facts in support of the relief requested are set forth in the Motion and incorporated herein. All capitalized terms not defined herein have the meaning ascribed in the Motion.

LEGAL ARGUMENT

A. UMB Should be Granted Expedited Stay Relief to Permit it to Commence Receivership and Foreclosure Proceedings on the Abandoned Reynolds PP Land.

UMB is entitled to expedited relief from the automatic stay for cause pursuant to section 362(d)(1) of the Bankruptcy Code because the Reynolds PP Land was previously abandoned by the Trustee and such land has no value or benefit to the Debtor’s estate or its creditors. Pursuant to section 362(d) of the Bankruptcy Code, upon request of a party in interest and after notice and hearing, the court shall grant relief from the automatic stay:

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-- (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization....

11 U.S.C. § 362(d). "The subsections of Section 362(d) are disjunctive, and the movant need satisfy only one of the two to obtain relief." *In re Touloumis*, 170 B.R. 825, 827 (Bankr. S.D.N.Y. 1994).

Here, for the reasons set forth above, UMB should be granted relief from the automatic stay for "cause" so that it can immediately take steps to preserve and protect the value of the Reynolds PP Land that is currently in the control of the Debtor or its assignees. Although the Reynolds PP Land was abandoned by the Trustee several years ago, stay relief is still necessary under the terms of 11 U.S.C. § 362 to permit UMB to commence receivership and foreclosure proceedings on its Mortgage. *See Gasprom, Inc. v. Fateh (In re Gasprom, Inc.)*, 500 B.R. 598 (B.A.P. 9th Cir. Oct. 28, 2013); *see also Seaver v. New Buffalo Auto Sales (In re Hecker)*, 496 B.R. 541 (8th Cir. B.A.P. Aug. 8, 2013) (concluding the automatic stay "was violated, at least in a technical sense" when a creditor's lien registration was filed on abandoned property owned by the debtor while the debtor's bankruptcy case was still pending).

In *Gasprom*, the court held that a lender's foreclosure sale violated the automatic stay in a pending bankruptcy even though the property had been abandoned before the foreclosure proceedings were commenced. *Gasprom*, 500 B.R. at 604-05. The court reasoned that upon abandonment, "one aspect of the stay, the aspect protecting the [property] as 'property of the estate' . . . no longer applied." *Id.* at 604 (citing 11 U.S.C. § 362(c)(1)). However, 11 U.S.C. § 362(a)(5) also extends the protection of the automatic stay to "property of the debtor" and because abandoned property is property owned by the debtor the automatic stay remained in place. *Id.* at 604-05.

The *Gasprom* court noted that several other courts had similarly found that abandoned property continues to be protected by the automatic stay to the extent it has reverted back to the debtor, unless and until the case is closed or dismissed, or a discharge is granted or denied. *Gasprom*, 500 B.R. at 605 (citing *Mut. Ins. Co. of New York v. County of Fresno (In re D. Papagni Fruit Co.)*, 132 B.R. 42, 45 (Bankr. E.D. Cal. 1991); *Coronado v. Beach Furniture & Appliance (In re Coronado)*, 11 B.R. 8, 9 (Bankr. D.Ariz. 1981); *Guild Mortgage Co. v. Cornist (In re Cornist)*, 7 B.R. 118, 120 (Bankr. S.D. Cal. 1980); *Gen. Motors Acceptance Corp. v. Bell (In re Bell)*, 700 F.2d 1053, 1057–58 (6th Cir. 1983); *Young v. Twin States Fin., Inc. (In re Young)*, 2012 WL 1189900, at *5– 6 (Bankr.S.D.Miss.2012); *In re Vicente*, 446 B.R. 26, 29–30 (Bankr.D.Mass.2011); *Adams v. Hartconn Assocs., Inc. (In re Adams)*, 212 B.R. 703, 710 (Bankr. D.Mass. 1997); *In re Lair*, 235 B.R. 1, 21–22 (Bankr. M.D. La. 1999); *Gassaway v. Fed. Land Bank of New Orleans (In re Gassaway)*, 28 B.R. 842, 846 (Bankr. N.D. Miss. 1983); *In re Cruseturner*, 8 B.R. 581, 592 (Bankr. D. Utah 1981)).

Here, the Debtor’s bankruptcy case remains pending, and thus the automatic stay remains in place to the extent the Reynolds PP Land continues to be owned by the Debtor. Although the Debtor has purportedly assigned its interests or other rights in the Reynolds PP Land to other parties, a recent Owner’s and Encumbrances report ordered on this land indicates that it is still in fact titled in the name of the Debtor. The *Gasprom* court described the significant risks with a lender proceeding with foreclosure action while the stay remains in place by noting that “actions taken in violation of the automatic stay are considered void ab initio.” *Gasprom*, 500 B.R. at 604 (citing *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009); *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir.

1992)). As a result, UMB requests relief from the automatic stay to permit it to proceed with a receivership and foreclosure action with respect to its Mortgage on the Reynolds PP Land.

CONCLUSION

Based on the facts as set forth in the verified Motion and the law set forth herein, UMB respectfully request that the court enter an order granting the relief requested by the Motion.

Dated: July 29, 2022

Respectfully Submitted,

COZEN O' CONNOR

/s/ Joel D. Nessel

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Case No. 18-50378 (WJF)

ERP Iron Ore, LLC

Chapter 11

Debtor.

**ORDER GRANTING MOTION OF UMB BANK, N.A., AS INDENTURE TRUSTEE
FOR EXPEDITED RELIEF AND FOR RELIEF FROM THE AUTOMATIC STAY**

This case comes before the court upon the Motion of UMB Bank, N.A., as indenture trustee (“**UMB**”) for Expedited Relief and Relief From the Automatic Stay (the “**Motion**”). Joel Nessel appeared for UMB and other appearances were noted on the record. Based upon the Motion and arguments of counsel and having determined the relief is appropriate under 11 U.S.C. §§ 105 and 11 U.S.C. § 362,

IT IS ORDERED:

1. The request for expedited relief is granted.
2. The Motion for relief from the stay is granted as follows.
3. The automatic stay imposed by 11 U.S.C. § 362(a) is terminated such that UMB is authorized to enforce its rights under its mortgage described in the Motion to commence foreclosure and receivership proceedings with respect to the real property located at 64 E 100 N, Reynolds, IN 47980 and legally described on the attached Exhibit A.
4. Notwithstanding Fed. R. Bankr. P. 4001(a)(3), this order is effective immediately.

Dated:

William J. Fisher
United States Bankruptcy Judge

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 91-74-27-000-000.200-005

TRACT I:

Part of the West Half of Section 27 and part of the East Half of Section 28, all in Township 27 North, Range 4 West, Honey Creek Township, White County, Indiana, more particularly described as follows:

Beginning at the Northeast corner of the Northwest Quarter of Section 27, being marked by an iron pipe; Thence South 00 degrees 29 minutes 10 seconds West, along the East line of the Northwest Quarter of Section 27, a distance of 2622.22 feet to the Northeast corner of the Southwest Quarter of Section 27, being marked by an iron pipe; Thence South 00 degrees 40 minutes 25 seconds East, along the East line of the Southwest Quarter of Section 27, a distance of 1355.56 feet to a stone at the Southeast corner of the Northeast Quarter of the Southwest Quarter of Section 27; Thence South 00 degrees 57 minutes 23 seconds East, along the East line of the Southwest Quarter, a distance of 824.91 feet to the North right of way line of TPW Railroad; Thence North 87 degrees 18 minutes 15 seconds West, along the North right of way line of TPW Railroad, a distance of 1017.01 feet; Thence North 86 degrees 58 minutes 30 seconds East a distance of 318.65 feet to a tangent curve to the left; Thence Easterly, Northeasterly, and Northerly, along said tangent curve having a radius of 523.00 feet, a central angle of 86 degrees 32 minutes 43 seconds, a chord length of 717.00 feet which bears North 43 degrees 42 minutes 08 seconds East, and an arc length of 789.99 feet; Thence North 00 degrees 25 minutes 47 seconds East, a distance of 287.45 feet to a tangent curve to the left; Thence Northerly, along said tangent curve having a radius of 624.00 feet, a central angle of 02 degrees 38 minutes 26 seconds, a chord length of 28.76 feet which bears North 00 degrees 53 minutes 26 seconds West, and an arc length of 28.76 feet; Thence South 87 degrees 46 minutes 08 seconds West, a distance of 449.68 feet; Thence South 01 degree 22 minutes 15 seconds East, a distance of 76.81 feet; Thence South 87 degrees 46 minutes 08 seconds West, a distance of 21.37 feet to the Southeast corner of the Northwest Quarter of the Southwest Quarter of Section 27, being marked by a railroad spike; Thence South 87 degrees 26 minutes 37 seconds West, along the South line of the Northwest Quarter of the Southwest Quarter of Section 27, a distance of 1330.31 feet to the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section 27, being marked by a railroad spike; Thence North 89 degrees 20 minutes 01 second West, along the South line of the Northeast Quarter of the Southeast Quarter of Section 28, a distance of 373.94 feet to a 5/8 inch diameter rebar with a plastic cap stamped "RWG 880043" and hereafter referred to as a standard monument on the East right of way line of the CSX Railroad; Thence North 01 degree 31 minutes 32 seconds West, along the East right of way line of the CSX Railroad, a distance of 1338.57 feet to a standard monument on the South line of the Northeast Quarter of Section 28; Thence North 01 degree 42 minutes 17 seconds West, along the East right of way line of the CSX Railroad a distance of 2176.96 feet to a standard monument in the centerline of Fraser Ditch; Thence North 42 degrees 28 minutes 38 seconds East, along the centerline of Fraser Ditch, a distance of 634.93 feet to the Northwest corner of Section 27, being marked by a railroad spike; Thence North 89 degrees 01 minute 39 seconds East, along the North line of the West Half of the Northwest Quarter of Section 27, a distance of 1363.65 feet to the Northeast corner of the West Half of the Northwest Quarter of Section 27 being marked by a railroad spike; Thence North 86 degrees 05 minutes 44 seconds East, along the North line of the East Half of the Northwest Quarter of Section 27, a distance of 1329.63 feet to the Point of Beginning, containing 280.069 Acres, more or less, being 35.070 Acres in Section 28 and 244.999 Acres in Section 27.

Bearings in the above description are based on S.P.C. Grid North, (N.A.D. 83)

TRACT II:

Part of the tract conveyed to Carl A. and Sallie L. Zarse and Ralph H. and Bonnie Lou Zarse in Deed Record Book 1988, Page 1295 and being part of the Southwest Quarter of the Southeast Quarter of Section 27, Township 27 North, Range 4 West, Honey Creek Township, White County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of the Southeast Quarter of Section 27, Township 27 North, Range 4 West,

EXHIBIT "A"
Legal Description

marked by an iron pipe; Thence South 00 degrees 40 minutes 25 seconds East, along the West line of the Southeast Quarter of Section 27, a distance of 1355.56 feet to the Northwest corner of the Southwest Quarter of the Southeast Quarter of Section 27, being marked by a stone; Thence South 00 degrees 57 minutes 23 seconds East, along the West line of the Southeast Quarter, a distance of 581.24 feet to the Point of Beginning of this description and the point of curvature of a non-tangent curve to the left; Thence Southeasterly and Easterly, along said non-tangent curve having a radius of 523.00 feet, a central angle of 49 degrees 03 minutes 33 seconds, a chord length of 434.26 feet which bears South 57 degrees 02 minutes 45 seconds East, and an arc length of 447.82 feet; Thence South 81 degrees 34 minutes 32 seconds East, a distance of 245.20 feet to the North right of way line of the TPW Railroad; Thence North 87 degrees 17 minutes 32 seconds West, along the North right of way line of the TPW Railroad, a distance of 603.55 feet to the West line of the Southeast Quarter; Thence North 00 degrees 57 minutes 23 seconds West, along the West line of the Southeast Quarter, a distance of 243.67 feet to the Point of Beginning, containing 0.861 of an Acre, more or less.

EXCEPTING THEREFROM, the following described tract of real estate conveyed to White County, Indiana, by Warranty Deed recorded June 19, 2008 as Instrument No. 080603256 and re-recorded August 8, 2008 as Instrument No. 080804144 in the Office of the Recorder of White County, Indiana:

A part of the Northwest Quarter of Section 27, Township 27 North, Range 4 West, 2nd P.M., Honey Creek Township, White County, Indiana, described as follows:

Beginning at the Northeast corner of said Northwest Quarter, being marked by an iron pipe found; Thence South 0 degrees 29 minutes 10 seconds West, along the East line of said Quarter Section, a distance of 2253.23 feet to the Point of Curvature of a Non-Tangent Curve; Thence Northwesterly and Northerly, along said Non-Tangent curve to the right a curve length 508.48 feet, said curve having a radius of 1835.00 feet, central angle of 15 degrees 52 minutes 36 seconds and chord bearing and length of North 7 degrees 27 minutes 08 seconds West, 506.85 feet; Thence North 0 degrees 29 minutes 10 seconds East, a distance of 1384.38 feet to the Point of Curvature of a Tangent curve; Thence Northerly, along said Tangent Curve to the left a curve length of 201.27 feet, said curve having a radius of 1965.00 feet and central angle of 5 degrees 52 minutes 07 seconds; Thence North 17 degrees 47 minutes 11 seconds West, a distance of 117.61 feet; Thence North 67 degrees 32 minutes 43 seconds West, a distance of 56.61 feet; Thence North 5 degrees 31 minutes 00 seconds West, a distance of 20.01 feet to the North line of said Quarter Section; Thence North 86 degrees 05 minutes 44 seconds East, along said North line, a distance of 172.27 feet to the Point of Beginning, containing 3.5301 Acres, more or less, being 0.0786 of an Acre in County Road 100 North right of way and 3.4515 Acres of new right of way.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Case No. 18-50378 (WJF)

ERP Iron Ore, LLC

Chapter 7

Debtor.

CERTIFICATE OF SERVICE

I, Heather McCourtney, declare under penalty of perjury, that on July 29, 2022 I served the following:

1. Notice of Hearing and Motion of UMB Bank, N.A., as Indenture Trustee for: (I) Emergency Relief; and (II) For an Order Granting Relief from the Automatic Stay;
2. Memorandum of Law; and
3. Proposed Order

by transmission of Notices of Electronic Filing generated by CM/ECF to those parties registered to receive electronic notices of filing in this case, and by overnight delivery and/or email as indicated on the attached service list.

July 29, 2022

/e/ Heather McCourtney

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re

Case No. 18-50378 (WJF)

ERP Iron Ore, LLC

Chapter 7

Debtor.

SERVICE LIST

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